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TURNER CONSTRUCTION COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELINDA GALARSA,

Plaintiff,

vs.

GALLETTI & SONS, INC., TURNER
CONSTRUCTION COMPANY, DAVID
SANDOVAL, and DOES 1 through 10,
Inclusive,

Defendants.

) USDC Case No. _____

)
) Superior Court of County of Alameda Case
) No. RG07316544

) **DEFENDANT TURNER**
) **CONSTRUCTION COMPANY'S**
) **NOTICE OF REMOVAL OF CIVIL**
) **ACTION TO UNITED STATES**
) **DISTRICT COURT**

**TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446,
Defendant TURNER CONSTRUCTION COMPANY ("Defendant") hereby removes the above-
captioned action from the Superior Court of California in and for the County of Alameda to the
United States District Court for the Northern District of California.

1. **JURISDICTION** This Court has original jurisdiction over this action under
28 U.S.C. § 1331 because the action arises under the laws of the United States of America. In
support of this removal, Defendant makes the following showing.

1 2. Defendant is informed and believes that on or about March 20, 2007, plaintiff
2 MELINDA GALARSA ("Plaintiff") filed a Complaint for Damages (the "Complaint") in the
3 Superior Court of California in and for the County of Alameda, titled "MELINDA GALARSA v.
4 GALLETTI & SONS, INC. ("Galletti"); TURNER CONSTRUCTION CO. ("Turner"); DAVID
5 SANDOVAL ("Sandoval"); and DOES 1 to 10, inclusive," Case No. RG07316544. The
6 Complaint purports to allege causes of action for (1) discrimination; (2) harassment; (3)
7 retaliation; and (4) intentional infliction of emotional distress.

8 3. Turner was served with the Complaint on March 30, 2007. Galletti was served on
9 March 29, 2007. Sandoval has not been served. This Notice of Removal is filed within 30 days
10 of service of the Complaint on Defendants. Thus, removal is timely pursuant to 28 U.S.C. §
11 1446(b) and Federal Rule of Civil Procedure 6(a). *See also Murphy Bros., Inc. v. Michetti Pipe*
12 *Stringing, Inc.*, 526 U.S. 344, 354-56 (1999) (removal is timely if made within 30 days after
13 complaint is served on defendant). Copies of all process, pleadings, notices and orders served
14 upon Defendants in this action, including the Complaint, are attached as Exhibit A hereto.

15 4. Galletti filed its answer to the Complaint in the Superior Court of California,
16 Alameda County, on April 24, 2007. A copy of that answer is attached hereto as Exhibit B.

17 5. Turner filed its Answer to the Complaint in the Superior Court of California,
18 Alameda County on April 30, 2007. A copy of that answer is attached hereto as Exhibit C.

19 6. This is a civil action of which this Court has original jurisdiction pursuant to 28
20 U.S.C. § 1331, and is one which may be removed to this Court by Defendants pursuant to 28
21 U.S.C. § 1441(a) and (b), in that it is a civil action which arises under the laws of the United
22 States of America.

23 7. Plaintiff's claims arise out of her employment with defendant Galletti as a
24 subcontractor on a project managed by Turner. As an employee of Galletti, Plaintiff is covered
25 by a master collective bargaining agreement ("CBA") governing the terms and conditions of her
26 employment. Turner is a signatory to that CBA. The agreement was entered into by Defendants
27 and Plaintiff's collective bargaining representative, Carpenter's 46 Northern California Counties
28 Conference Board (the "Union"), a labor organization within the meaning of

1 Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (“Section 301”). The
 2 CBA was in full force and effect during the time period relevant to the Complaint.

3 8. Plaintiff alleges statutory claims under the California Fair Employment &
 4 Housing Act (“FEHA”) for sexual harassment, discrimination, failure to prevent discrimination
 5 and harassment, and retaliation. Plaintiff also asserts a tort claim for Intentional Infliction of
 6 Emotional Distress (“IIED”), (Complaint, ¶¶ 60-64), which incorporates all allegations set forth
 7 in paragraphs 1 through 59 of the Complaint.

8 9. Plaintiff’s Complaint makes no reference to the fact that Plaintiff is a member of
 9 the Union, nor does it mention that the terms and conditions of Plaintiff’s employment with
 10 Galletti & Sons, Inc. are governed by the CBA. The Complaint makes no reference at all to the
 11 Union or the CBA.

12 10. Plaintiff’s claims are central to, inextricably intertwined with, and substantially
 13 dependent upon an interpretation of the terms of the CBA. Subsection (a) of Section 301 states:

14 Suits for **violation of contracts between an employer and a**
 15 **labor organization** representing employees in an industry
 16 affecting commerce as defined in this chapter, or between any such
 17 labor organizations, **may be brought in any district court of the**
 18 **United States having jurisdiction of the parties**, without respect
 to the amount in controversy or without regard to the citizenship of
 the parties. (Emphasis added.)

19 Therefore, her claims must necessarily require interpretation of the CBA. Because her lawsuit
 20 alleges a “violation of [a] contract[] between an employer and a labor organization,” this Court
 21 has original jurisdiction.

22 11. Plaintiff’s claims address, concern, and pertain directly to rights and obligations
 23 which arise from the CBA itself, and therefore cannot be evaluated without considering the
 24 provisions of the CBA. Hence, the claims arise under, and are preempted by, Section 301. *See,*
 25 *e.g., Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985) (where evaluation of state law
 26 claim is “inextricably intertwined” with the terms of a collective bargaining agreement, such
 27 claim actually arises under federal labor law and is preempted).

12. Plaintiff alleges that in retaliation for reporting unlawful conduct, she was “singled out for reprimand for safety issues, which other people, who had not opposed unlawful conduct, were not reprimanded for; Plaintiff was forced to wear additional safety gear that others were not required to wear....” (Complaint, ¶ 21). Plaintiff further alleges that she was retaliated against by being transferred to a different work location. (Complaint, ¶ 55). These allegations are incorporated by reference into Plaintiff’s IIED cause of action. (Complaint, ¶ 60). Plaintiff’s IIED claim is preempted under section 301(a) because it is dependent on an analysis of the CBA, specifically its clauses addressing safety issues and job transfer and assignment issues. *Newberry v. Pacific Racing Ass’n*, 854 F.2d 1142, 1149-50 (9th Cir. 1988) (emotional distress claim preempted; claim dependent on whether employer’s conduct was justified, which required analysis of collective bargaining agreement). Plaintiff’s IIED claim, which incorporates by reference all of her statutory discrimination and harassment claims (Complaint, ¶ 60), is also dependent on interpretation of the CBA’s non-discrimination clause. The IIED claim is preempted on that basis, as well. It is well-settled that Federal labor law preempts common law tort claims requiring interpretation of a CBA. See e.g., *Stikes v. Chevron U.S.A., Inc.*, 914 F.2d 1265, 1268-71 (9th Cir. 1990); *Chmiel v. Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1287 (9th Cir. 1989).

13. Because Plaintiff’s claim is pleaded in terms of state law but in fact requires interpretation of the CBA, the Court must recharacterize it as arising under Section 301. Plaintiff may not conceal the federal character of her claims by “artfully pleading” them in state law terms. See, e.g., *Allis-Chalmers Corp.*, 471 U.S. at 210-11; *Young v. Anthony’s Fish Grottos, Inc.*, 830 F.2d 993, 999 (9th Cir. 1987) (“[t]he key to determining the scope of preemption is not how the complaint is cast, but whether the claims can be resolved only by referring to the terms of the collective bargaining agreement”). As Plaintiff’s claims arise under federal labor law, which preempts any collateral state law claims based on the same facts, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331, and removal is proper under 28 U.S.C. §§ 1441 and 1446. *Paige v. Henry J. Kaiser Co.*, 826 F.2d 857, 861 (9th Cir. 1987); *Newberry*, 854 F.2d at 1146.

14. Even if this Court determines that as few as one of Plaintiff's claims is preempted by Section 301, Plaintiff's remaining claims are still within this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), as they relate to and emanate from the same facts and transactions underlying Plaintiff's preempted claim, thus forming part of the same "case or controversy." See, e.g., *Jackson v. Southern Cal. Gas Co.*, 881 F.2d 638, 642 (9th Cir. 1989); *Nishimoto v. Federman-Bachrach & Associates*, 903 F.2d 709 (9th Cir. 1990) (removal is proper even where state law claims also exist). Accordingly, by virtue of 28 U.S.C. § 1441, Defendants are entitled to remove all of Plaintiff's claims to this Court.

15. **VENUE/INTRADISTRICT ASSIGNMENT:** Venue lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1441(a) because the state court action was filed in this District. Pursuant to Civil Local Rule 3-2(c) and (d), this case should be assigned to the San Francisco or Oakland Division of this Court, as a substantial part of the alleged events giving rise to the case are alleged to have occurred in the County of Alameda. (Complaint, ¶ 1.)

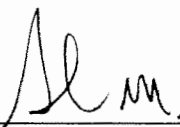
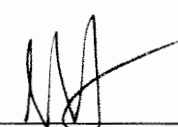
16. Both defendants who have been served in this case join in this removal.

17. Defendants will give notice of the filing of this Notice of Removal to Plaintiff and to the Clerk of the Superior Court of California in and for the County of Alameda. This Notice of Removal is concurrently being served on all other parties.

WHEREFORE, Defendants pray that this civil action be removed from the Superior Court of California in and for the County of Alameda to this Court.

DATED: April 30 2007

SEYFARTH SHAW LLP

By  
William J. Dritsas
Andrew M. McNaught

Attorneys for Defendant
TURNER CONSTRUCTION COMPANY

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EXHIBIT A

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Attorneys for Plaintiff, MELINDA GALARSA

ENDORSED
FILED
ALAMEDA COUNTY

MAR 20 2007

CLERK OF THE SUPERIOR COURT
BY YASMIN SINGH, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MELINDA GALARSA,

Plaintiff,

vs.

GALLETTI & SONS, INC., TURNER
CONSTRUCTION COMPANY, DAVID
SANDOVAL, and Does 1 through 10, inclusive,

Defendants.

CASE NO. R07B16544

COMPLAINT FOR DAMAGES

1. HARASSMENT IN VIOLATION OF THE FEHA
2. DISCRIMINATION IN VIOLATION OF FEHA
3. FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND HARASSMENT
4. FAILURE TO TAKE PROMPT CORRECTIVE ACTION TO REMEDIATE KNOWN HARASSMENT IN VIOLATION OF FEHA
5. RETALIATION
6. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff MELINDA GALARSA (hereinafter "GALARSA"), for her complaint against Defendants GALLETTI & SONS, INC. (hereinafter "GALLETTI & SONS"), TURNER CONSTRUCTION COMPANY, (hereinafter "TURNER CONSTRUCTION"), DAVID SANDOVAL (hereafter "SANDOVAL"), hereafter sometimes collectively referred to as "Defendants," and DOES to 25, inclusive, hereafter sometimes collectively referred to as "Doe Defendants," alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction and venue, as the wrongful acts alleged herein occurred in the city of Oakland, County of Alameda, State of California. Plaintiff is informed and believes, and thereon alleges, that some of the defendants resided in Alameda County. The amount in controversy exceeds those of the minimum jurisdiction of this court.

PARTIES

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant GALLETTI & SONS, and at all times mentioned herein was, a corporation duly organized and existing under the laws of the State of CALIFORNIA with places of business, among other locations, in Martinez, California.

3. GALLETTI & SONS is a concrete subcontractor based in the bay area. GALLETTI & SONS does subcontracting concrete work throughout the bay area, including for TURNER CONSTRUCTION at the Oakland International Airport.

4. GALLETTI & SONS was at all material times an employer within the meaning of California Government Code section 12926(d) and 12940(j)(4)(A) and, as such, is barred from discriminating in employment on the basis of sex or race or harassing employees on the basis of sex or race, as set forth in Government Code Section 12940, *et seq.*

5. TURNER CONSTRUCTION is a general contractor based in Oakland, California, that oversees large construction projects throughout the bay area, including at the Oakland International Airport.

6. TURNER CONSTRUCTION was at all material times an employer within the meaning of California Government Code section 12926(d) and 12940(j)(4)(A) and, as such, is barred from discriminating in employment on the basis of sex or race or harassing employees on the basis of sex or race, as set forth in Government Code Section 12940, *et seq.*

7. Plaintiff GALARSA is an adult female and therefore a member of a protected class pursuant to the California Fair Employment and Housing Act (hereinafter "FEHA") and the regulations promulgated thereunder. At all times mentioned herein, she was a resident of California. From March 1998 through the present, Plaintiff has been an employee of Defendants GALLETTI &

1 SONS and Does 1 through 25. Plaintiff filed appropriate claims with the Department of Fair
2 Employment and Housing ("DFEH") and has received right-to-sue letters.

3 8. Defendant SANDOVAL is an adult male. At all times herein mentioned, he was a
4 resident of California. At all times herein mentioned, Defendant SANDOVAL was a safety
5 manager, and supervisory employee of Defendants TURNER CONSTRUCTION and DOES 1 to 25.
6

7 9. In doing the acts complained of herein, Defendant SANDOVAL acted individually
8 and as an agent of Defendants TURNER CONSTRUCTION and Does 1 to 25, and as such,
9 Defendants TURNER CONSTRUCTION and DOES 1 to 25 are liable for SANDOVAL's acts of
10 unlawful harassment and discrimination. Defendant SANDOVAL is personally liable for his acts of
11 unlawful harassment and discrimination pursuant to Government Code Section 12940(j)(3).
12

13 10. The true names or capacities, whether individual, corporate, associate or otherwise, of
14 Defendants DOES 1 to 25, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
15 by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the
16 Defendants designated herein as DOE is legally responsible in some manner (as the agent, partner
17 and/or employee of the co-defendant) for the events and happenings herein referred to and in doing
18 the actions mentioned below was acting individually and as an agent of Defendants GALLETTI &
19 SONS and TURNER CONSTRUCTION. Plaintiff will amend this Complaint to allege the true
20 names and capacities of such Defendants when they are ascertained.
21

22 11. At all times relevant herein, each of the Defendants was the agent, employee,
23 supervisor, servant and joint venturer of each of the remaining Defendants and in doing the things
24 hereafter alleged, each Defendant was acting within the course, scope and authority of such agency,
25 employment and joint venture, and with the consent and permission of each of the other Defendants.
26 All actions of each Defendant alleged in the causes of action in which this paragraph is incorporated
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1 by reference were ratified and approved by the officers and/or managing agents of every other
2 Defendant.

3
4 **FACTS ALLEGED**

5 12. Defendant SANDOVAL was at all relevant times the safety manager at TURNER
6 CONSTRUCTION and acted as a supervisory employee.

7 13. Plaintiff began working for Defendant GALLETTI & SONS on or about March,
8 1998, first as a carpenter apprentice and later as a journeyman.

9 14. Plaintiff was dispatched to work at the Oakland International Airport job site for
10 general contractor and Defendant TURNER CONSTRUCTION on or about November, 2004.

11 15. During the course of her employment with GALLETTI & SONS, and her time
12 working as a contractor for TURNER CONSTRUCTION. Plaintiff was not provided with a
13 sufficient sexual harassment policy nor was one distributed, and no training on the issue was
14 provided. As a result, Plaintiff suffered Harassment as set forth in part below.

15 16. Between November, 2004, and April, 2006, Plaintiff was assigned to work at a jobsite
16 located at the Oakland International Airport. During this time, many employees of GALLETTI &
17 SONS and TURNER CONSTRUCTION engaged in the following sexually harassing and unlawful
18 conduct which is not intended to be exhaustive but merely to serve as examples: Drawing a nude
19 picture of a woman intended to resemble Plaintiff, with large breasts and legs spread, on the wall of
20 a bathroom all employees used, next to a drawing of a nude male with an erect penis; regularly
21 asking Plaintiff out on dates even after she said no and otherwise indicated that the conduct was
22 unwelcome, multiple persons employed by Defendants staring at Plaintiff's breasts on a daily basis.

23 17. Unlawfully based comments were made regularly, on a daily basis, and were severe
24 and pervasive. Plaintiff opposed these practices directly to the co-workers who engaged in these
25 activities on many occasion, as well as to Defendant SANDOVAL, her foreman, and her
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1 superintendent, all of whom were managers employed by Defendants GALLETTI & SONS and/or
2 TURNER CONSTRUCTION.

3 18. Despite Plaintiff's repeated complaints to Defendant SANDOVAL and others, the
4 harassing and unlawful conduct did not cease.

5 19. On or about April, 2006, Defendant SANDOVAL told Plaintiff that he had been
6 sexually harassing Plaintiff as well. On this date Defendant SANDOVAL told Plaintiff that he and
7 other GALLETTI & SONS and TURNER CONSTRUCTIONS employees had been engaging in the
8 following sexually harassing and unlawful conduct:
9

- 10 a) Calling Plaintiff "store bought" in reference to her breasts and because of a belief that
11 she had breast implants;
12 b) On a daily basis, talking about Plaintiff's "ass" and "tits";
13 c) On a daily basis, telling each other that they wanted to "fuck" Plaintiff; and
14 d) Ogling Plaintiff on a daily basis.
15 e) Additionally, throughout her employment at the Oakland Airport jobsite, Plaintiff was
16 propositioned, ogled, and on a daily basis had sexually based, unwelcome comments
17 made to her by Oakland Airport security personnel at the jobsite.
18

19 20. Very upset, Plaintiff again reported this conduct, though it was open and obvious, to
20 GALLETTI & SONS and TURNER CONSTRUCTION.
21

22 21. Plaintiff suffered adverse changes to the terms and conditions of her employment
23 when she opposed this conduct, and was subjected to further and increased harassing behavior and
24 was treated negatively in material ways by other employees and supervisors of Defendants and each
25 of them. Specifically, after opposing the unlawful conduct, Plaintiff was singled out for reprimand
26 for safety issues, which other people, who had not opposed unlawful conduct, were not reprimanded
27 for; Plaintiff was forced to wear additional safety gear that others were not required to wear; new
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1 employees would tell Plaintiff the she "was the person everyone was talking about" in reference to
2 her having opposed unlawful conduct.

3 **FIRST CAUSE OF ACTION**
4 **HARASSMENT IN VIOLATION OF THE FEHA**
5 **(Brought by Plaintiff, Against Defendants, and Each of Them, for Violation of Government**
6 **Code Section 12940 *et seq.*)**

7 22. The allegations set forth in Paragraphs 1 through 21, inclusive, are realleged by
8 Plaintiff and incorporated herein by reference as though fully set forth herein.

9 23. Within the time provided by law, Plaintiff filed charges with the California
10 Department of Fair Employment and Housing ("DFEH"), in full compliance with these sections,
11 received a right-to-sue letter, and has commenced this action in a timely fashion.

12 24. At all times herein mentioned Government Code sections 12940, *et seq.* ("FEHA"),
13 was in full force and effect and was binding on defendants. These require defendants, among other
14 things, to refrain from discriminating against or harassing any employees on the basis of their status
15 in a protected classification. Each Plaintiff was a member of at least one protected class under the
16 FEHA.

17 25. The acts of defendants, and each of them, as described more fully above, constitute a
18 pattern and continuous course of harassment in violation of Government Code sections 12940 *et seq.*
19 in that they are severe and/or pervasive.

20 26. As a direct and proximate result of the harassment against Plaintiff as described
21 above, Plaintiffs suffered special damages including, but not limited to, losses in earnings, bonuses,
22 deferred compensation, employment benefits, earning capacity, opportunities for employment
23 advancement and work experiences, and other damages to be proven at the time of trial.

24 27. As a direct and proximate result of the unlawful conduct of defendants and each of
25 them, plaintiff has suffered general damages including but not limited to shock, embarrassment,
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1 physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at
2 the time of trial.

3 28. Defendant SANDOVAL committed the acts herein alleged maliciously, fraudulently
4 and oppressively with the wrongful intention of injuring plaintiff, from an improper and evil motive
5 amounting to malice, and in conscious disregard of the rights of plaintiff. As a result of defendants'
6 willful, knowing and intentional discrimination against plaintiff, plaintiff seeks an award of punitive
7 and exemplary damages in an amount according to proof.
8

9 **SECOND CAUSE OF ACTION**
10 **DISCRIMINATION IN VIOLATION OF FEHA**
11 **(Brought by Plaintiff Against All Defendants, and Each of Them, for Discrimination in**
12 **Violation of Government Code Section 12940 et seq.)**

13 29. The allegations set forth in paragraphs 1 through 28, inclusive, are realleged and
14 incorporated herein by reference as though fully set forth herein.

15 30. Within the time provided by law, Plaintiff filed charges with the DFEH, in full
16 compliance with these sections, received right-to-sue letters, and has commenced this action in a
17 timely manner.

18 31. Plaintiff is informed and believes, and thereon alleges that Defendants, and each of
19 them, discriminated against Plaintiff, as set forth above, in the terms and conditions of employment
20 on the basis of her status in a protected classification as defined by the FEHA.

21 32. As a direct and proximate result of the unlawful conduct of Defendants and each of
22 them, Plaintiff has suffered special damages including but not limited to past and future loss of
23 income, benefits, medical expenses, and other damages to be proven at time of trial.

24 33. As a direct and proximate result of the unlawful conduct of Defendants and each of
25 them, Plaintiffs have suffered general damages including but not limited to shock, embarrassment,
26 physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at
27 the time of trial.
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1 34. Plaintiff is informed and believes, and thereon alleges that Defendants and each of
2 them committed the acts herein alleged maliciously, fraudulently, and oppressively in conscious
3 disregard for Plaintiff's rights. Plaintiff is entitled to recover punitive damages from each in an
4 amount according to proof.

5 35. As a direct and proximate result of the unlawful conduct of Defendants and each of
6 them, Plaintiff was forced to retain an attorney in order to protect their rights. Accordingly, Plaintiff
7 seeks the reasonable attorneys fees incurred in this litigation in an amount according to proof at trial.

9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO TAKE ALL REASONABLE STEPS**
11 **TO PREVENT DISCRIMINATION AND HARASSMENT**
12 **(Against Defendants, GALLETTI & SONS, TURNER CONSTRUCTION, and DOES 1-25, for**
13 **Violation of Government Code Section 12940, et seq.**

14 36. The allegations set forth in Paragraphs 1 through 35, inclusive, are realleged and
15 incorporated herein by reference as though fully set forth herein.

16 37. Plaintiff is informed, believes, and therefore alleges that defendants GALLETTI &
17 SONS, TURNER CONSTRUCTION, and DOES 1 to 25, and their supervisors, agents, and officers,
18 as the employer and/or managing agents and/or supervisors of plaintiff, had a duty to take
19 affirmative steps to prevent discrimination and harassment from occurring in the workplace.

20 38. Plaintiff is informed, believes, and thereon alleges that defendants GALLETTI &
21 SONS, TURNER CONSTRUCTION, and DOES 1-25, their supervisors, agents, and officers, failed
22 to take reasonable steps necessary to prevent discrimination, harassment, and retaliation from
23 occurring in the workplace.

24 39. Plaintiff is informed, believes, and therefore alleges that defendants GALLETTI &
25 SONS, TURNER CONSTRUCTION, and DOES' 1 to 25 discrimination, harassment, and/or
26 retaliation against them resulted from these defendants' failure to take prompt and appropriate
27 remedial measures to prevent discrimination and/or harassment from occurring in the workplace. As
28

1 such, defendants GALLETTI & SONS, TURNER CONSTRUCTION, and DOES 1 to 25 violated
2 FEHA's mandate to take all reasonable steps to prevent discrimination and/or harassment from
3 occurring in the workplace.

4 40. As a direct and proximate result of the unlawful conduct of defendants and each of
5 them, Plaintiff has suffered special damages including but not limited to past and future loss of
6 income, benefits, medical expenses, and other damages to be proven at time of trial.

7
8 41. As a direct and proximate result of the unlawful conduct of defendants and each of
9 them, Plaintiff has suffered general damages including but not limited to shock, embarrassment,
10 physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at
11 the time of trial.

12 42. Plaintiff is informed and believes, and thereon alleges that defendants and each of
13 them committed the acts herein alleged maliciously, fraudulently and oppressively in conscious
14 disregard for plaintiff's rights. Plaintiff is entitled to recover punitive damages from each in an
15 amount according to proof.

16
17 43. As a direct and proximate result of the unlawful conduct of defendants and each of
18 them, plaintiff was forced to retain an attorney in order to protect their rights. Accordingly, plaintiff
19 seeks the reasonable attorneys fees incurred in this litigation in an amount according to proof at trial.

20 WHEREFORE Plaintiff prays for judgment as set forth below

21
22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO TAKE PROMPT CORRECTIVE ACTION TO REMEDIATE KNOWN**
24 **HARASSMENT IN VIOLATION OF FEHA**
25 **(California Government Code § 12940, et seq.)**
26 **(Against Defendants GALLETTI & SONS, TURNER CONSTRUCTION,**
27 **and DOES 1 to 25)**

28 44. The allegations set forth in Paragraphs 1 through 43, inclusive, are realleged and
incorporated herein by reference as though fully set forth herein.

///

1 45. Plaintiff is informed, believes, and therefore alleges that defendants GALLETTI &
2 SONS, TURNER CONSTRUCTION, and DOES 1 to 25, their supervisors, agents, and officers, as
3 the employer and/or managing agents and/or supervisors of plaintiffs, had a duty to take prompt
4 corrective action to remediate harassment which was known and/or should have been known.

5 46. Plaintiff is informed, believes, and thereon alleges that defendants GALLETTI &
6 SONS, TURNER CONSTRUCTION, and DOES 1 to 25, their supervisors, agents, and officers,
7 failed to take prompt corrective action to know harassment in the workplace, and that such failure
8 resulted in further harassment and retaliation as set forth above.

9 47. Plaintiff is informed, believes, and therefore alleges that defendants GALLETTI &
10 SONS', TURNER CONSTRUCTION's, and DOES' 1 to 25 discrimination and/or harassment
11 against her resulted from these defendants failure to take prompt and appropriate remedial measures
12 to prevent discrimination and/or harassment from occurring in the workplace. As such, defendants
13 GALLETTI & SONS, TURNER CONSTRUCTION, and DOES 1 to 25 violated FEHA's mandate
14 to take prompt corrective action to remedy known discrimination.
15

16 48. As a direct and proximate result of the unlawful conduct of defendants and each of
17 them, plaintiff has suffered special damages including but not limited to past and future loss of
18 income, benefits, medical expenses, and other damages to be proven at time of trial.
19

20 49. As a direct and proximate result of the unlawful conduct of defendants and each of
21 them, plaintiff has suffered general damages including but not limited to shock, embarrassment,
22 physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at
23 the time of trial.
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27 ///

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1 50. Plaintiff is informed and believes, and thereon alleges that defendants and each of
2 them committed the acts herein alleged maliciously, fraudulently and oppressively in conscious
3 disregard for plaintiff's rights. Plaintiff is entitled to recover punitive damages from each in an
4 amount according to proof.

5 51. As a direct and proximate result of the unlawful conduct of defendants and each of
6 them, plaintiff was forced to retain an attorney in order to protect their rights. Accordingly, plaintiff
7 seeks the reasonable attorneys fees incurred in this litigation in an amount according to proof at trial.

8 WHEREFORE Plaintiff prays for judgment as set forth below.

9
10 **FIFTH CAUSE OF ACTION**
11 **RETALIATION**
12 **(Against All Defendants, and Each of Them,**
 for Retaliation in Violation of Government Code Section 12940(h))

13 52. The allegations set forth in paragraphs 1 through 51, inclusive, are realleged and
14 incorporated herein by reference as though fully set forth herein.

15 53. Within the time provided by law, plaintiff filed charges with the DFEH, in full
16 compliance with these sections, received right-to-sue letters, and has commenced this action in a
17 timely manner.

18 54. At all times herein mentioned, Government Code section 12940(h) was in full force
19 and effect and was binding on defendants. This section provides that it is an unlawful practice for
20 any employer or person to discharge, expel, or otherwise discriminate against any person because the
21 person has opposed any practices forbidden by the Fair Employment and Housing Act ("FEHA") or
22 because the person has filed a complaint, testified or assisted in any proceeding.

23 55. After plaintiff reported her allegations of harassment and discrimination to Defendant
24 SANDOVAL and other managers, defendants retaliated against plaintiff in the following ways: 1)
25 continuing to engage in the harassing and discriminatory conduct; 2) continuing to employ
26 Plaintiff's harassing coworkers; and 3) transferring Plaintiff to a different work location.
27
28

1 56. As a direct and proximate result of the unlawful conduct of defendants and each of
2 them, plaintiff has suffered special damages including but not limited to past and future loss of
3 income, benefits, medical expenses, and other damages to be proven at time of trial.

4 57. As a direct and proximate result of the unlawful conduct of defendants and each of
5 them, plaintiff has suffered general damages including but not limited to shock, embarrassment,
6 physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at
7 the time of trial.

8 58. Defendants committed the acts herein alleged maliciously, fraudulently and
9 oppressively with the wrongful intention of injuring plaintiff, from an improper and evil motive
10 amounting to malice, and in conscious disregard of the rights of plaintiff. Such conduct was also
11 authorized and/or ratified by an owner, officer, director or managing agent of defendants. In light of
12 defendants' willful, knowing and intentional discrimination against plaintiff, she seeks an award of
13 punitive and exemplary damages in an amount according to proof.

14 59. As a direct cause of the acts alleged above, plaintiff has had to hire the services of an
15 attorney. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, and is
16 entitled to an award of attorneys' fees and costs pursuant to Government Code section 12965(b)
17 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
18 court to amend this complaint when the amounts are more fully known.

19 WHEREFORE Plaintiff prays for judgment as set forth below.

20
21
22 **SIXTH CAUSE OF ACTION**
23 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
24 **(Against All Defendants, and Does 1 to 25, and Each of Them)**

25 60. The allegations set forth in paragraphs 1 through 59, inclusive, are realleged and
26 incorporated herein by reference as though fully set forth herein.

27
28 ///

1 61. Defendants' conduct alleged herein was intentional, outrageous, malicious, and
2 committed for the purpose of causing plaintiff to suffer humiliation, mental anguish, and severe
3 physical and emotional distress.

4 62. As a direct and proximate result of Defendants' conduct as herein above alleged,
5 Plaintiff was injured in her strength, health, and activity, sustaining shock and injury to her nervous
6 system, all of which have caused and continue to cause Plaintiff great mental pain, embarrassment,
7 humiliation, distress, anguish and suffering, all to her damage in an amount in excess of the
8 minimum subject matter jurisdiction of this court and according to proof.

9
10 63. As a direct and proximate cause of the conduct alleged herein, plaintiff has suffered
11 and continues to suffer losses in earnings, bonuses, deferred compensation, employment benefits and
12 earning capacity, opportunities for employment advancement, embarrassment, humiliation, mental
13 anguish and distress, all to her damage in excess of the minimum subject matter jurisdiction of this
14 Court and according to proof.

15
16 64. The acts of defendants alleged above were done maliciously, oppressively, and/or
17 fraudulently. Accordingly, Plaintiff seeks an award of punitive and exemplary damages in an
18 amount according to proof.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 22 1. For compensatory damages as to all causes of action;
23 2. For punitive damages as to all causes of action;
24 3. For an award of interest, including prejudgment interest, at the legal rate;
25 4. For an award of attorneys' fees as allowed under Causes of Action 1 through 4
26 5. For costs of suit incurred;

27 ///
28

1 6. For injunctive and declaratory relief; and

2 7. For such other and further relief as the court deems appropriate.

3 Dated: March 19, 2007

4 WINER, McKENNA & DAVIS

5
6 BY: 

7 EMILE A. DAVIS,
8 Attorney for Plaintiff,
9 MELINDA GALARSA



Attorney or Party without Attorney: Emile A. Davis, Esq. - SBN 208394 Winer, McKenna & Davis, LLP One Kaiser Plaza, Suite 1450 Oakland, CA 94612 Attorney for: Plaintiff		Telephone No.: (510) 433-1000		FILED ALAMEDA COUNTY APR 23 2007 CLERK OF THE SUPERIOR COURT By <u>Aida J. Lemos</u> Deputy
Ref. No. or File No.:				
Insert name of Court, and Judicial District and Branch Court: ALAMEDA SUPERIOR COURT - OAKLAND BRANCH				
Plaintiff: MELINDA GALARSA Defendant: GALLETTI & SONS, INC., et al.				
PROOF OF SERVICE (Summons And Complaint)	Hearing Date:	Time:	Dept/Div	Case Number: RG07316544

1. At the time of service I was at least 18 Years of age and not a party to this action.
2. I served copies of the:
Summons And Complaint
3. a. Party Served: GALLETTI & SONS, INC. (Defendant)
b. Person Served: JOHN O. GALLETTI, AUTHORIZED AGENT
4. Address where the party was served: 55 HOWE ROAD
MARTINEZ, CA 94553
5. I served the party:
b. by substituted service on: Thu, Mar. 29, 2007 at: 3:00PM I left the documents listed in item 2 with or in the presence of:
KIMBERLY GALLAGHER, HUMAN RESOURCES ASSISTANT
(1) (business) Person in Charge over 18. I informed him or her of the general nature of the papers.
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
c. on behalf of: GALLETTI & SONS, INC.
Under CCP 416.10 (corporation)
7. Person who served the papers:
a. DAMON PULIDO
b. MUSTANG PROCESS SERVICE
459 WASHBURN DRIVE
FREMONT, CA 94536
c. (510) 754-0888
d. The Fee for service was: \$129.00
e. I am: (3) Registered California process server.
(i) Employee
(ii) Registration No.: 672
(iii) County: CONTRA COSTA

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Mar. 29, 2007

Judicial Council Form POS-010

Rule 982.9. (a) & (b) Rev Jan. 01, 2007

PROOF OF SERVICE (DAMON PULIDO)

MUSTANG.107574

Emile A. Davis, Esq.-SBN 208394
Winer, McKenna & Davis, LLP
One Kaiser Plaza, Suite 1450
Oakland, CA 94612
(510) 433-1000
Attorney for: Plaintiff

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

MELINDA GALARSA
Plaintiff,

CASE NO: RGO7316544

vs.

**DECLARATION OF SERVICE
BY MAIL**

GALLETTI & SONS, INC., et al.
and Does 1 through 10 inclusive
Defendant(s)
_____ /

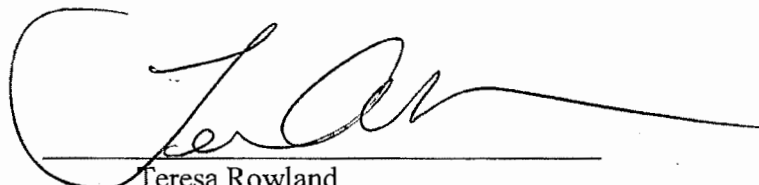
I, Teresa A. Rowland, declare that:

I am employed in the County of Alameda, California. I am over the age of
eighteen years and not a party to the within cause; my business address is 459 Washburn
Drive, Fremont, CA 94536. I served the within Summons & Complaint;
by personally mailing a copy to:

**GALLETTI & SONS, INC.
Attn: John O. Galletti-Agent for Service
55 Howe Road
Martinez, CA 94553**

I deposited the envelope @ 4:00 pm on April 4, 2007 from Fremont,
CA .

I declare under penalty of perjury that the foregoing is true and correct and
that this declaration was executed on April 5, 2007 at Fremont, California.

A handwritten signature in dark ink, appearing to read 'T. Rowland', is written over a horizontal line.

Teresa Rowland
Mustang Process Service
459 Washburn Drive
Fremont, CA 94536
(510) 754-0888
San Mateo Co. #224



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): A. Davis, Esq.-SBN 208394 Winer, McKenna & Davis, LLP One Kaiser Plaza, Suite 1450 Oakland, CA 94612 TELEPHONE NO.: (510) 433-1000 FAX NO. (Optional): (510) 433-1001 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff		FOR CC FILED ALAMEDA COUNTY APR 23 2007 CLERK OF THE SUPERIOR COURT By <u>Aida J. Lemos</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: Same as above CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Civil		CASE NUMBER: RG07316544
PLAINTIFF/PETITIONER: MELINDA GALARSA DEFENDANT/RESPONDENT: GALLETTI & SONS, INC.		Ref. No. or File No.:
PROOF OF SERVICE OF SUMMONS		

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☐ Alternative Dispute Resolution (ADR) package
 - d. ☐ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☐ other (specify documents):
3. a. Party served (specify name of party as shown on documents served):
TURNER CONSTRUCTION COMPANY
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Ct Corporation System/Agent for Service, By serving Bjorn Flor, Authorized Agent for CT Corp.
4. Address where the party was served:
818 West Seventh Street, Los Angeles, CA 90017
5. I served the party (check proper box)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party. (1) on (date): 3/30/07 (2) at (time): 12:05 pm
 - b. ☐ **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: MELINDA GALARSA	CASE NUMBER:
DEFENDANT/RESPONDENT: GALLETTI & SONS, INC.	RG07316544

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): Turner Construction Company

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: April Anderson
- b. Address: Mustang Process Service, 459 Washburn Drive, Fremont, CA 94536
- c. Telephone number: (510) 754-0888
- d. The fee for service was: \$ 129.00 (Los Angeles Co.)
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor
- (ii) Registration No.: 4626
- (iii) County: Los Angeles

8. ☐ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

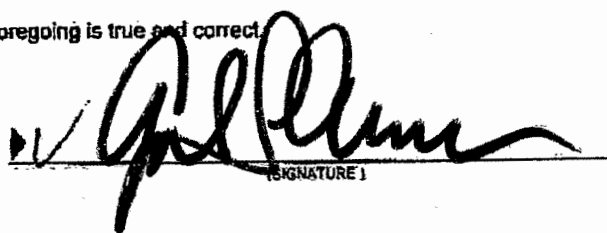
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: March 30, 2007

April Anderson

(NAME OF PERSON WHO SERVED PAPERS (SHERIFF OR MARSHAL))



(SIGNATURE)

EXHIBIT B



FILED
ALAMEDA COUNTY

07 APR 24 AM 11:03

Barbara C. [Signature]

1 MICHAEL T. LUCEY (SBN: 099927)
2 PAULA KUTANSKY-BROWN (SBN: 245342)
3 GORDON & REES LLP
4 Embarcadero Center West
5 275 Battery Street, Suite 2000
6 San Francisco, CA 94111
7 Telephone: (415) 986-5900
8 Facsimile: (415) 986-8054

Attorneys for Defendant
GALLETTI & SONS, INC.

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

MELINDA GALARSA,

Plaintiff,

vs.

GALLETTI & SONS, INC., TURNER
CONSTRUCTION COMPANY, DAVID
SANDOVAL, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. RG07316544

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT

BY FAX

Defendant GALLETTI & SONS, INC. answers Plaintiff's Complaint as follows:

GENERAL DENIAL

In answer to the Complaint, and each cause of action thereof, Defendant denies each and every allegation of Plaintiff's complaint pursuant to Code of Civil Procedure section 431.30 subdivision (d), and specifically denies that Plaintiff has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendants.

AFFIRMATIVE DEFENSES

///

///

///

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

FIRST AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Plaintiff's causes of action are barred in whole or in part, to the extent that she has failed to exhaust her available administrative remedies as required by law.

SECOND AFFIRMATIVE DEFENSE

(Failure to State Claims for Relief)

The Complaint and each of the purported cause of action set forth therein fail to state facts sufficient to constitute a cause of action or claims for relief.

THIRD AFFIRMATIVE DEFENSE

(Good Faith and Good Cause)

Defendant's conduct was at all times reasonable, in complete good faith, based upon good cause, and motivated solely by non-discriminatory, legitimate considerations.

FOURTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

This action may be barred, Defendant's liability may be limited, and/or damages may be unavailable or reduced by after-acquired evidence.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff has failed adequately to mitigate her damages, or to mitigate her damages at all, and thus is barred from recovering such damages, if any there were.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is estopped from proceeding with this claim and/or has waived her rights to proceed with this claim.

SEVENTH AFFIRMATIVE DEFENSE

(Preemption by Workers' Compensation)

The exclusive remedy for the damages Plaintiff seeks is provided by the Workers'

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275 Battery Street, Suite 2000
San Francisco, CA 94111

1 Compensation Act, California Labor Code section 3200, et seq.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 **(Plaintiff Failed to Take Advantage of Preventative or Corrective Opportunities)**

4 Plaintiff's causes of action and claims for damages are barred in whole or in part because
5 Defendants exercised reasonable care to prevent and promptly correct any alleged discriminatory
6 behavior, and Plaintiff unreasonably failed to take advantage of the preventative or remedial
7 mechanisms for reporting and resolving claims, or to otherwise avoid harm.

8 **NINTH AFFIRMATIVE DEFENSE**

9 **(Scope of Administrative Charges)**

10 The Court lacks subject matter jurisdiction over all claims and allegations in the
11 complaint that are not contained in, exceed or differ from Plaintiff's charge of discrimination
12 filed with the DFEH and/or the EEOC.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Set-Off)**

15 Defendant is entitled to set-off of any benefits Plaintiff receives or has received from
16 workers' compensation, unemployment compensation, and from any benefit plans of Defendant
17 or other employers, for injuries or damages alleged, against any award of damages to Plaintiff in
18 this action.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 **(Statute of Limitations)**

21 Each of Plaintiff's claims is barred by the applicable statute of limitations, including, but
22 not limited to Code of Civil procedure, section 337 et seq., 339 et seq., and 340 et seq., and
23 Government Code, sections 12940, 12960 and 12965.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(Failure to Use Process)**

26 Plaintiff unreasonably failed to make use of employer-provided remedies, policies and
27 procedures designed to prevent and eliminate discrimination and it is more likely than not that at
28 least some of Plaintiff's damages, if any there were, would have been avoided by reasonable use

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San Francisco, CA 94111

1 of these internal procedures.

2 **PRAYER AND REQUEST FOR COSTS AND ATTORNEY'S FEES**

3 Defendant alleges that it may have other separate and additional defenses of which it is
4 not presently aware and reserves the right to amend this Answer to assert such defenses as they
5 become apparent.

6 WHEREFORE, Defendant prays for judgment as follows:

- 7 1. That Plaintiff takes nothing by reason of her Complaint, and the Complaint be
8 dismissed with prejudice;
- 9 2. For attorney's fees; and for costs of suit.
- 10 3. For interest and all sums provided by law; and
- 11 4. For such other and further relief as this Court deems just and proper.

12
13 Dated: April 20, 2007

GORDON & REES LLP

14
15 By: 

16 PAULA KUTANSKY-BROWN
17 Attorneys for Defendant
18 GALLETTI & SONS, INC.
19
20
21
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25
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27
28

MELINDA GALARSA v. GALLETTI & SONS, INC., et al.
ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG07316544
PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Embarcadero Center West, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On April 20, 2007, I served the within documents:

1. Defendant's Answer to Complaint

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.

by causing to be personally delivered by First Legal Support Services the document(s) listed above to the person(s) at the address(es) set forth below.

by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:

PLAINTIFF'S COUNSEL

Emile A. Davis, Esq.
Winer, McKenna & Davis, LLP
The Ordway Building
One Kaiser Plaza, Suite 1450
Oakland, CA 94612
Ph: (510) 433-1000
Fax: (510) 433-1001

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 20, 2007, at San Francisco, California.

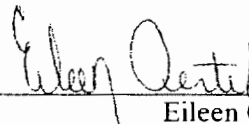

Eileen Oertel

EXHIBIT C

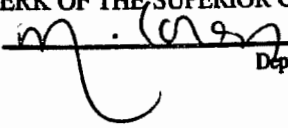
SEYFARTH SHAW LLP
William J. Dritsas (State Bar No. 097523)
Andrew M. McNaught (State Bar No. 209093)
560 Mission Street, Suite 3100
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

Attorneys for Defendant
TURNER CONSTRUCTION COMPANY

ENDORSED
FILED
ALAMEDA COUNTY

APR 30 2007

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

MELINDA GALARSA,

Plaintiff,

vs.

GALLETTI & SONS, INC., TURNER
CONSTRUCTION COMPANY, DAVID
SANDOVAL, and DOES 1 through 10,
Inclusive,

Defendants.

Case No. RG07316544

DEFENDANT TURNER
CONSTRUCTION COMPANY'S
ANSWER TO PLAINTIFF'S
UNVERIFIED COMPLAINT

BY FAX

Defendant TURNER CONSTRUCTION COMPANY ("Defendant"), hereby responds to the allegations set forth in Plaintiff MELINDA GALARSA'S ("Galarsa" or "Plaintiff") unverified Complaint for Damages ("Complaint") as follows:

GENERAL DENIAL

1. Pursuant to California Code of Civil Procedure §431.30(d), Defendant denies generally and specifically every material allegation in the Complaint. In addition, Defendant denies it violated any laws, or that it is liable in any way with respect to Galarsa's purported causes of action. Similarly, Defendant denies it injured Galarsa or any other person Galarsa purports to represent, or that Galarsa or any other person she purports to represent is entitled to damages or to any other kind of relief in connection with this case. As separate defenses to each

1 of the purported causes of action contained in the Complaint, Defendant further alleges as
2 follows:

3 **FIRST SEPARATE DEFENSE**

4 (Failure to State a Cause of Action -- all Causes of Action)

5 Plaintiff's Complaint, and each purported cause of action alleged therein, fails to state
6 facts sufficient to constitute a cause of action upon which any relief may be granted.

7 **SECOND SEPARATE DEFENSE**

8 (Statute of Limitations -- all Causes of Action)

9 Plaintiff's purported causes of action are barred by the applicable statutes of limitations,
10 including, but not limited to, California Code of Civil Procedure §§ 335.1, 337(1), 338(a),
11 339(1), and California Government Code §§ 12960 and 12965.

12 **THIRD SEPARATE DEFENSE**

13 (Workers' Compensation Preemption -- all Causes of Action)

14 Any and all claims by Plaintiff based in whole or in part upon any alleged physical or
15 emotional injury or distress to Plaintiff, are barred and preempted by the exclusivity provisions
16 of the California Workers' Compensation Act. (Labor Code §§ 3200 et seq.).

17 **FOURTH SEPARATE DEFENSE**

18 (Ratification -- all Causes of Action)

19 Plaintiff's purported causes of action are barred in whole or in part to the extent that any
20 conduct attributable to Defendant was ratified by Plaintiff.

21 **FIFTH SEPARATE DEFENSE**

22 (Waiver -- all Causes of Action)

23 Plaintiff's purported causes of action are barred in whole or in part by the doctrine of
24 waiver.

25 **SIXTH SEPARATE DEFENSE**

26 (Equitable Estoppel -- all Causes of Action)

27 Plaintiff's purported causes of action are barred in whole or in part by Plaintiff's own
28 improper conduct, acts or omissions, and therefore, she is equitably estopped from recovering on

1 any of her claims.

2 **SEVENTH SEPARATE DEFENSE**

3 (Unclean Hands -- all Causes of Action)

4 Plaintiff's purported causes of action are barred in whole or in part by the doctrine of
5 unclean hands.

6 **EIGHTH SEPARATE DEFENSE**

7 (Failure to Mitigate Damages -- all Causes of Action)

8 Plaintiff is not entitled to back pay and/or other damages, to the extent that she failed to
9 seek and obtain other employment and/or otherwise failed to mitigate her alleged loss of wages
10 or other damages.

11 **NINTH SEPARATE DEFENSE**

12 (Good Cause -- all Causes of Action)

13 Legal and good cause for Defendant's actions existed pursuant to law.

14 **TENTH SEPARATE DEFENSE**

15 (Good Faith -- all Causes of Action)

16 Defendant acted reasonably and in good faith at all times material herein based on all
17 relevant facts and circumstances known by Defendant.

18 **ELEVENTH SEPARATE DEFENSE**

19 (Legitimate Non-Discriminatory/Retaliatory Factors -- First through Fifth Causes of Action)

20 Plaintiff's purported causes of action are barred in whole or in part because all actions
21 undertaken by Defendant were based on legitimate and non-discriminatory, non-retaliatory
22 business reasons, purposes, or necessity.

23 **TWELFTH SEPARATE DEFENSE**

24 (Privilege or Justification -- all Causes of Action)

25 Plaintiff's purported causes of action are barred because any actions and/or omissions
26 attributable to Defendant were at all times privileged or justified.

THIRTEENTH SEPARATE DEFENSE

(No Punitive Damages -- all Causes of Action)

Plaintiff is not entitled to recover any punitive or exemplary damages, and any allegations with respect thereto should be stricken because Plaintiff has failed to plead and cannot prove facts sufficient to support allegations of oppression, fraud and/or malice pursuant to California Civil Code § 3294. Plaintiff's claim for punitive damages is further barred because it violates the due process clauses of the California Constitution and the Constitution of the United States of America.

FOURTEENTH SEPARATE DEFENSE

(After Acquired Evidence – all Causes of Action)

Plaintiff's Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the doctrine of after-acquired evidence or, alternatively, the doctrine of after-acquired evidence limits and reduces Plaintiff's alleged damages.

FIFTEENTH SEPARATE DEFENSE

(Management Discretion – all Causes of Action)

Any and all conduct of which Plaintiff complains or which is attributed to Defendant was a just and proper exercise of management discretion on the part of Defendant undertaken for a fair and honest reason.

SIXTEENTH SEPARATE DEFENSE

(Attorneys' Fees - all Causes of Action)

Plaintiff knew or should have known that the Complaint, and each of the causes of action alleged therein, is without any reasonable basis in law and equity and cannot be supported by a good faith argument for extension, modification, or reversal of existing law. As a result of Plaintiff's filing of this lawsuit, Defendant has been required to obtain the services of the undersigned attorneys and has and will continue to incur substantial costs and attorneys' fees in defense of this frivolous case. Defendant is therefore entitled to recover reasonable attorneys' fees, expenses, and costs incurred by and through this action in accordance with California Code of Civil Procedure § 128.5.

SEVENTEENTH SEPARATE DEFENSE

(Claims Outside of DFEH Complaint - First through Fifth Causes of Action)

To the extent Plaintiff asserts claims in her Complaint that were not made the subject of a timely complaint filed with the Department of Fair Employment and Housing ("DFEH") as required by Government Code section 12965, the Court lacks jurisdiction with respect to these claims, and they must therefore be dismissed.

EIGHTEENTH SEPARATE DEFENSE

(Time Barred Allegations Barred - First through Fifth Causes of Action)

To the extent Plaintiff's FEHA claims rely on allegations of events which occurred more than one year prior to the date on which Plaintiff filed her DFEH complaint, such claims are time-barred. (Government Code § 12960).

NINETEENTH SEPARATE DEFENSE

(Prompt Remedial Action - all Causes of Action)

To the extent Plaintiff complained of any unlawful conduct, prompt remedial action was taken.

TWENTIETH SEPARATE DEFENSE

(Plaintiff's Failure to File Timely Administrative Charge – First through Fifth Causes of Action)

Plaintiff's causes of action are barred in whole or in part to the extent she failed to file a proper charge with an appropriate administrative agency within the required legal deadlines, including but not limited to the deadlines under Government Code §§ 12940 *et seq.*

TWENTY-FIRST SEPARATE DEFENSE

(No Intentional or Reckless Conduct – Sixth Cause of Action)

Defendant engaged in no intentional or reckless conduct which would justify a claim for intentional infliction of emotional distress.

TWENTY-SECOND SEPARATE DEFENSE

(Failure to Utilize Preventative or Corrective Opportunities – First - Fifth Causes of Action)

Plaintiff's claims are barred in whole or in part because Defendant exercised reasonable care to prevent and promptly correct any alleged discriminatory, harassing, or retaliatory

1 conduct, and Plaintiff unreasonably failed to take advantage of the preventative or remedial
2 mechanisms for reporting and resolving claims, or to otherwise avoid harm.

3 **TWENTY-THIRD SEPARATE DEFENSE**

4 (Plaintiff's Failure to Exhaust Internal Grievance Procedures – All Causes of Action)

5 Plaintiff's causes of action are barred in whole or in part to the extent she failed to
6 exhaust available internal dispute-resolution and grievance procedures under the applicable
7 Collective Bargaining Agreement before filing the Complaint.

8 **TWENTY-FOURTH SEPARATE DEFENSE**

9 (LMRA Section 301(a) Preemption – Sixth Cause of Action)

10 Plaintiff's Sixth Cause of Action is barred because it is preempted under § 301(a) of the
11 LMRA, 29 U.S.C. 185(a).

12 **ADDITIONAL DEFENSES**

13 Defendant presently has insufficient knowledge or information upon which to form a
14 belief whether there may be additional, as yet unstated, defenses and reserve the right to assert
15 additional defenses in the event that discovery indicates that such defenses are inappropriate.

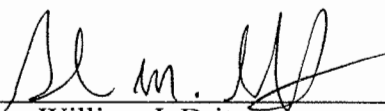
16 WHEREFORE, Defendant prays as follows:

- 17 1. That Plaintiff take nothing by her Complaint and that the Complaint be dismissed
18 with prejudice;
- 19 2. For costs of suit and reasonable attorneys' fees incurred herein; and
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3. For such other and further relief as this Court deems proper.

DATED: April 30th 2007

SEYFARTH SHAW LLP

By 
William J. Dritsas
Andrew M. McNaught

Attorneys for Defendant
TURNER CONSTRUCTION COMPANY

SF1 28282605.1 / 36891-000007

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 560 Mission Street, Suite 3100, San Francisco, California 94105. On April 30, 2007, I served the within document(s):

DEFENDANT TURNER CONSTRUCTION COMPANY'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT

- ☐ I sent such document from facsimile machine (415) 397-8549 on April 30, 2007. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (415) 397-8549 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at , California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at , California, addressed as set forth below.
- ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

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275 Battery St., Ste. 2000
San Francisco, CA 94111
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Attorney for Plaintiff MELINDA
GALARSA

Attorneys for GALLETTI & SONS, INC.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 30, 2007, at , California.


JESSICA E. LIBBEY

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 560 Mission Street, Suite 3100, San Francisco, California 94105. On April 30, 2007, I served the within document(s):

**DEFENDANT TURNER CONSTRUCTION COMPANY'S NOTICE OF
REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT; AND
CIVIL CASE COVER SHEET**

- ☐ I sent such document from facsimile machine (415) 397-8549 on April 30, 2007. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (415) 397-8549 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.
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Attorney for Plaintiff MELINDA
GALARSA

Attorneys for GALLETTI & SONS, INC.

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